

13987 B  
RECORDATION NO. 13987  
MAR 16 1983 -2 25 PM  
INTERSTATE COMMERCE COMMISSION  
A DIVISION OF  
**PACCAR**

13987 A  
RECORDATION NO. 13987  
Filed 1425

MAR 16 1983 -2 25 PM

INTERSTATE COMMERCE COMMISSION  
**Pacific Car and Foundry Company**  
1400 NORTH 4TH STREET, RENTON, WASHINGTON 98055 • (206) 251-7700

MAR 16 1983 -2 25 PM  
RECORDATION NO. 13987  
INTERSTATE COMMERCE COMMISSION  
MAR 16 1983 -2 25 PM  
INTERSTATE COMMERCE COMMISSION

March 15, 1983

Interstate Commerce Commission  
ICC Building  
12th and Constitution Avenues, N. W.  
Room 2303  
Washington DC 20423

Attention: Mrs. Mildred Lee

Dear Mrs. Lee:

In accordance with the provisions of 49 U.S.C. 11303 and Rules and Regulations of the Interstate Commerce Commission ("ICC") thereunder, there is submitted herewith for filing and recordation a Conditional Sale Agreement and an Agreement and Assignment relating to railroad cars used or intended for use in connection with interstate commerce, as follows:

Two (2) executed counterparts of Conditional Sale Agreement dated as of March 1, 1983 between Pacific Car and Foundry Company, Division of PACCAR Inc, and Anchorage Sand and Gravel Company; Finance Agreement dated as of March 1, 1983 between Anchorage Sand and Gravel Company and PACCAR Financial Corporation; and Agreement and Assignment dated as of March 1, 1983 between PACCAR Financial Corporation and Pacific Car and Foundry Company.

The address of Pacific Car and Foundry Company is 1400 North Fourth Street, Renton, Washington, 98055. The address of Anchorage Sand and Gravel Company is 1813 East First Avenue, Anchorage, Alaska, 99501 and the address of PACCAR Financial Corporation is 777-106th Avenue N. E., Bellevue, Washington, 98009.

The equipment covered by these documents is described in Exhibit "A" attached hereto.

Enclosed is our check #11-40084 in the amount of \$50.00 to cover the ICC recordation fee.

You are hereby requested to return one (1) executed counterpart of the Conditional Sale Agreement, the Finance Agreement and the Agreement and Assignment and this letter with filing data recorded thereon, following recordation, to the undersigned.

Also, we would appreciate your advising me by phone at (206) 251-7597 on the day recordation occurs so that we may release said railroad cars into service.

If you have any questions, please feel free to contact me.

Very truly yours,  
*Monica J. Stover*  
Monica J. Stover  
Contract Administrator

MJS/lj  
Enc.

3-075A.142  
MAR 16 1983  
50.00

RECEIVED  
MAR 16 2 18 PM '73  
FEE OPERATION BR.

EXHIBIT "A"

<u>QUANTITY</u>	<u>SPECIFICATION #</u>	<u>DESCRIPTION AND A.A.R. MECHANICAL DESIGNATION</u>	<u>INITIALS AND CAR NUMBERS (ALL INCLUSIVE)</u>
80	PC-877	100-Ton Open Top Triple Hopper Cars, Type "HT"	ASGX 601-680

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**3/16/83**

**OFFICE OF THE SECRETARY**

**Monica J. Stover**  
**Pacific Car & Foundry Co.**  
**1400 North 4th St.**  
**Renton, Washington 98055**

**Dear Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/16/83 at 2:25pm , and assigned re-  
recording number(s). 13987, 13987-A, 13987-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

13987  
RECORDATION NO. .... Filed 1425  
MAR 16 1983 - 2 23 PM  
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT dated as of March 1, 1983, between Pacific Car and Foundry Company, a division of PACCAR Inc (hereinafter called the Builder), and Anchorage Sand and Gravel Co., Inc (hereinafter called the Company).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Builder", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Pacific Car and Foundry Company, a division of PACCAR Inc and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to Paccar Financial Corp.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall cause the units of the Equipment to be constructed by it as described in Schedule A hereto at its plant set forth in said Schedule A and will sell and deliver to the Company, and the Company will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Company (which specifications and modifications, if any, are hereinafter called the Specifications). Each unit of the Equipment will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Company at the place or places specified in Schedule A hereto (or if said Schedule A does not specify a place or places, at the place or places designated from time to time by the Company, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule A hereto; provided, however, that the Builder shall have no obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) of Article 16 hereof or if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Company and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector or the Company for inspection and if each such unit conforms to the Specifications requirements and standards applicable thereto, such inspector or an authorized representative of the Company shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit of Equipment hereunder at the place specified for delivery, the Company will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule A hereto. Such base price or prices, which include on-line freight, are subject to such increase or decrease as is agreed to by Builder and the Company. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, plus off-line freight charges, if any.

The Company hereby acknowledges itself to be indebted to the Builder in the amount of, and hereby promises to pay in cash to the Builder at such place as the Builder may designate, the Purchase Price of the Equipment, as follows:

- (a) upon execution of this document an amount equal to ten percent (10%) of the Purchase Price for all Equipment and related charges.

(b) in 84 consecutive equal monthly installments of \$63,351.41 commencing July 1, 1983 to and including June 1, 1988. This payment amount is inclusive only of that amount billed on invoice 80222 for \$3,595.280. Additional amounts to be invoiced at a later date (Ref. Article 4, Paragraph One) shall increase your payment at a rate of \$19.5785 per \$1,000.00 increase in the principal amount of this contract.

The parties agree that during the term of this contract the effective time price differential on the principal balance shall vary in accordance with fluctuations in the prime rate and will be calculated on the unpaid principal balance on a daily basis. The effective time price differential due each month shall be equal in amount to prime rate calculated on the remaining principal balance under the contract, but never less than 8.5 percent nor greater than 15.5 percent. The aforementioned term "prime rate" shall mean the prime commercial interest rate of Seattle First National Bank. The prime rate in effect on the first day of each calendar month will be used to determine the time price differential to be paid at each succeeding due date. The prime rate at the original date of the contract will be the prime rate in effect on the first day of that calendar month.

Late or early payments over the term of the contract will affect the amount of the final payment. Any delay in payment could cause the TIME PRICE DIFFERENTIAL, the TIME BALANCE, and the TOTAL TIME SALE PRICE to be greater than disclosed. Early payments, or reduction in the prime rate, could cause those amounts to be less than disclosed, resulting in a smaller final payment or a reduced number of payments.

The term "Closing Date" with respect to the Equipment shall mean June 1, 1983.

The Company will pay, to the extent legally enforceable, the interest at maximum allowing rate upon all amount remaining unpaid after the same shall have become due and payable pursuant to the terms hereof anything herein to the contrary notwithstanding.

In the event Builder, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Company, the assignee thereof may request the Company to make and the Company shall make such payments to it at such address as shall be supplied to the Company by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Company hereunder will be free of expense to the Builder for collection or other charges and will be free of expense to the Builder with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or

imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Company assumes and shall pay on demand. The Company will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Builder solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Builder or result in a lien upon any part of the Equipment; provided, however, that the Company shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Builder, adversely affect the title or interests of the Builder in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Builder directly and paid by the Builder, the Company shall reimburse the Builder upon presentation of an invoice therefor, and any amounts so paid by the Builder shall be secured by and under this Agreement; provided, however, that the Company shall not be obligated to reimburse the Builder for any impositions so paid unless the Builder shall have been legally liable with respect thereto or unless the Company shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Builder shall and hereby does retain its title and interest in the Equipment until the Company shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Company's obligations herein contained shall have been performed by the Company, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Builder. However, the Builder, if so requested by the Company at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Company, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Company at its address referred to in Article 21 hereof, (b) execute and deliver at the

same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release. The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Company.

ARTICLE 7. Marking of the Equipment. The Company will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT" with appropriate changes thereof and additions thereto as from time-to-time may be required by law in order to protect the Builder's title and interests in the Equipment and its rights under this Agreement. The Company will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Company will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Builder by the Company and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the preceding paragraph, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Company may cause the Equipment to be lettered with the names or initials or other insignia of the Company or its affiliates.

ARTICLE 8. Insurance. Company agrees to keep the Equipment continuously insured against fire, theft, collision and any other hazard Builder specifies by an insurance company acceptable to the Builder. The amount of insurance shall be the full insurable value of the Equipment or the full amount of all obligations this Agreement secures, whichever is greater. The insurance policy shall provide, in a form acceptable to Builder, for payment of any loss to Builder. Company shall deliver to Builder proof of insurance coverage acceptable to Builder. The



insurance policy shall provide that it can be cancelled only after written notice of intention to cancel has been delivered to Builder at least ten (10) days before the cancellation date. If the Equipment is lost or damaged, Builder shall have full power to collect any or all insurance proceeds and to apply them as Builder chooses either (i) to satisfy an obligation secured by this Agreement (whether or not due or otherwise matured), or (ii) to repair the Equipment. If Company obtains insurance from a company Builder has not approved, or fails to obtain any insurance, Builder may (but does not have to) obtain any insurance Builder desires to protect its interests. If Builder does so, Company shall reimburse Builder upon demand for its expenses. Builder shall have no liability at all for any losses which occur because no insurance has been obtained or the coverage of the insurance which has been obtained is complete.

If any unit(s) of the Equipment become inoperable or unfit for use due to causes not covered by insurance, the Company shall within six (6) months of notice by the Builder do one of the following:

a) Repair the unit(s) so as to make it operable or fit for use.

b) Replace the unit (s) with a comparable unit(s) of Railroad equipment.

The Company will cause any replacement unit(s) to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Builder subject to the provisions hereof, and the Company shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interest of the Builder in such replacement units.

c) Pay to the Builder the remaining pro rata outstanding balance for such unit(s)

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Company will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Company will at all times comply in all respects with the laws of the jurisdictions in which its operations involving the Equipment may extend, with interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Company will conform therewith, at its own expense; provided, however, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Builder, adversely affect the property or rights of the Builder under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1984, the Company shall furnish to the Builder an accurate statement signed by an officer of the Company (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 month (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Builder may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Builder shall have the right, by its agents, to inspect the Equipment and the Company's records with respect thereto at such reasonable times as the Builder may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Company, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon Railroad owned or operated by The Alaska Railroad Company, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Company, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of such units of Equipment by the Builder of such units to the Company, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Company shall not be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 12. Prohibition Against Liens. The Company will pay or discharge any and all sums claimed by any party from, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Builder's title and interest therein; provided, however, that the Company shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Builder, adversely affect the title or interest of the Builder in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Builder in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmens', mechanics', workmens', repairmens' or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Company's Indemnities. The Company will indemnify, protect and hold harmless the Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Builder of title and interests in the Equipment, the use and operation thereof by the Company during the period when said title and interests remain in the Builder or its assignee or the transfer of said title and interests in the Equipment by the Builder pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Warranty. The Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Company will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Builder.

All or any of the rights, benefits and advantages of the Builder under this Agreement, including the right to receive the payments herein provided to be made by the Company may be assigned by the Builder and reassigned by any assignee at any time or from time-to-time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties contained or referred to in Article 14 hereof, or relieve the

Company of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company under this Agreement to the Builder shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Company recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Builder hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Builder hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Builder as herein before provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment of the builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Builder.

The Company will (a) in connection with the settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Builder as may reasonably be requested.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

- a) The Company shall fail to pay in full any indebtedness with respect to the Purchase Price of the Equipment or any other sum payable by the Company as provided in this Agreement when payment thereof shall be due hereunder and such failure shall continue for a period of five (5) days after notice of non-payment.
- b) The Company shall, for more than fifteen (15) days after the Builder shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Builder for such compliance; or
- c) The Company becomes insolvent or subject to insolvency proceedings defined in the Uniform Commercial Code or becomes subject to bankruptcy or makes an assignment for the benefit of creditors.
- d) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Builder may, upon written notice to the Company and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Builder, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Builder shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect to the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company wherever situated. The Company shall promptly notify the Builder of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time, could constitute and event of default under this Agreement.

The Builder may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. If Company defaults under this Agreement, in addition to the rights Builder has under the law in effect at the time of default, the following provisions shall apply:

- a) On Builder's demand, Company shall deliver possession of the Equipment to Builder at a place Builder designates reasonably convenient to both parties.
- b) Builder may enter any premises where the Equipment may be found and take possession of it without notice, demand, or legal proceedings, provided that such entry and repossession are lawful.
- c) Builder may sell the Equipment and Builder shall give Company at least ten (10) days' written notice of any such sale of the Equipment, which Company agrees to be reasonable notice. Notice shall be given at the address specified in this Agreement or such other address as Company may specify in writing to Builder. Notice shall be effective when deposited in the mails, postage prepaid, or delivered to a telegraph company, addressed as provided above.
- d) Company agrees to pay to Builder on demand all out-of-pocket expenses, including reasonable expenses for attorneys' fees (not to exceed 15% of the unpaid balance) and costs, incurred after a default under Article 16 of this Agreement or incurred in connection with the enforcement of this Agreement, the performance by Builder of any obligations of Company regarding the Equipment which Company has failed or refused to perform, or any actual or attempted sale of Equipment, and for the care of the Equipment and defense of assertion of rights and claims of Builder regarding the Equipment by litigation or otherwise, including expenses of insurance. Company's obligation to pay these expenses shall bear interest at the highest lawful rate and shall be secured by this Agreement.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal Law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice or any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Builder's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Company will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Company will from time-to-time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Builder, including the necessary UCC filings, for the purpose of proper protection, to the satisfaction of Builder, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly furnish to the Builder certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Builder.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

- a) To the Company at 1813 East First Avenue  
Anchorage, Alaska 99501.
- b) To the Builder, at 1400 North 4th Street, Renton,  
Washington 98055, and
- c) To any assignee of the Builder, at such address as  
may have been furnished in writing to each of the  
other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Builder and the Company with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver or any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Builder and the Company.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations shall be governed by the laws of the state of Washington.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

Anchorage Sand and Gravel  
Co., Inc.

(Corporate Seal)

Attest:

James C. Simmons, Jr.  
Attesting Officer

by Robert Ballor  
its Vice President

(Corporate Seal)

Attest:

James M. Brown  
Attesting Officer  
Secretary

Pacific Car and Foundry Company,  
a Division of PACCAR Inc.

by Cervald R. Williams  
its Senior Vice President



STATE OF *Washington* )  
COUNTY OF *King* ) ss.

On this *15th* day of *March*, 19*83*, before me personally appeared *Gerald R. Robbins*, to me personally known, who being by me duly sworn, says that he is the *Senior Vice President* of Pacific Car and Foundry Company, that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

*Barbara Gerstetter*  
Notary Public in and for the state  
of *Washington* residing at *Kirkland*

My commission expires *7-24-85*

STATE OF *Alaska* )  
COUNTY OF ) ss.

On this *14th* day of *March*, 19*83*, before me personally appeared *Robert Ballou*, to me personally known, who being by me duly sworn, says that he is the *Vice President* of Anchorage Sand and Gravel Co., Inc., that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

*Diane C. Simmons*  
Notary Public in and for the state  
of *Alaska* residing at  
*Anchorage, AK. 99501*

My commission expires *4-10-84*



# Pacific Car and Foundry Company

A

1400 NORTH 4TH ST. RENTON, WASHINGTON 98055  
RAILROAD CARS AND EQUIPMENT, INDUSTRIAL PRODUCTS

CUSTOMER ORDER NO.

8538

A DIVISION OF  
PACOR

TERR.	TAX	DOCUMENT TYPE	CUST. CODE	DATE INVOICED	TERMS:	SALES	OUR ORDER NO.	INVOICE NO.
02	20	1	A62A365	3/2/83	FROM DATE OF INVOICE JUNE 1, 1983	A62	67737	80222

INVOICE TO SAME AS SHIPPED TO UNLESS OTHERWISE NOTED

INTEREST AT 1% PER MONTH  
CHARGED ON PAST DUE ACCOUNTS

SHIPPED TO INVOICE TO

ANCHORAGE SAND & GRAVEL COMPANY  
1813 EAST FIRST AVENUE  
ANCHORAGE AK 99501

CONTRACT NUMBER

BILL OF LADING NUMBER

SHIPPING POINT

RENTON WA

F.O.B.

RENTON WA

COLLECT	PREPAY	P.P. & ADD.	ROUTE:	DATE SHIPPED	DATE OF ORDER	REFERENCE NO.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			11/2/82	

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	NET
	80	47'-4 1/2" 100-TON OPEN TOP, TYPE "HT", TRIPLE HOPPER CARS LETTERED ASGX AND NUMBERED 601 THRU 680, INCLUSIVE.  80 CARS @ \$44,941.00 EACH  PREPAID FREIGHT INVOICE TO FOLLOW  Delivery Date - March, 1983  PLEASE DO NOT RETURN ANY MERCHANDISE WITHOUT OUR PERMISSION ALL MATERIAL ACCEPTED FOR RETURN IS SUBJECT TO A HANDLING CHARGE		\$3,595,280.00

C/JF

ORIGINAL



A DIVISION OF  
**PACCAR**

**Pacific Car and Foundry Company**

1400 NORTH 4TH STREET, RENTON, WASHINGTON 98055 • (206) 251-7700

December 10, 1982

Mr. Robert B. Ballow  
Vice President and General Manager  
Anchorage Sand & Gravel Co., Inc.  
1813 East First Avenue  
Anchorage AK 99501

Dear Mr. Ballow:

Thank you for confirming Order No. 8538 dated November 2, 1982 covering (80) 100-Ton 3,300 Cu. Ft. Hopper Cars.

It is understood that all terms and conditions of our September 27, 1982 and our September 30, 1982 letters will apply to this order with the following exceptions:

1. Payment for all cars will be made on June 1, 1983. Request payment be effected by wire transfer of funds, or an equivalent, which ensures PACCAR's receipt on 1 June 1983.
2. All labor included in our base car quotation is quoted firm and labor\_escalation will not apply.

For contractual purposes, the following details the current base car price:

September 27, 1982 Formal Quotation @	\$45,530.00 per car
September 30, 1982 Car Price (rounded to nearest hundred)	\$45,500.00 per car
Less October 30, 1982 Negotiations @	\$ <u>(559.00)</u> per car
Total Base Car Price, f.o.t. Renton, Washington @	\$44,941.00 per car

Inspection and final acceptance of the cars by AS&G will be f.o.t. Renton, Washington, prior to shipping.



Pacific Car and Foundry Company

1400 NORTH 4TH STREET, RENTON, WASHINGTON 98057-3170

Mr. Robert B. Ballow  
Vice President and General Manager  
Anchorage Sand & Gravel Co., Inc.

Page 2  
December 10, 1982

In accordance with our September 30, 1982 letter, we will pre-pay freight to Whittier, Alaska on all cars moving empty via Alaska Hydro-Train at \$3,300.00 per car. Any upward change in freight cost, due to AS&G's diversion to another carrier, will be for AS&G's account.

We certainly appreciate this opportunity to be of service to you. If you have any questions, please feel free to contact us.

Sincerely yours,

A. G. Bohorfoush, Jr.  
Manager - Marketing & Sales  
Railroad Products

AGB/MJS/lj

cc: D. W. Paul  
Sales Manager - Western Region  
Pacific Car and Foundry Company

BCC: W. A. Robbins  
O. M. Jeffrey  
W. J. Rowley  
K. R. Brownstein  
F. Russell  
R. D. Omey  
M. B. Strutynski (unpriced)  
H. W. Mantle "  
J. R. Davis "



## Pacific Car and Foundry Company

1400 NORTH 4TH STREET, RENTON, WASHINGTON 98055 • (206) 251-7700

September 27, 1982

Mr. Robert B. Ballow  
Vice President & General Manager  
Anchorage Sand & Gravel Company, Inc.  
1813 East First Avenue  
Anchorage, AK 99501

Dear Mr. Ballow:

We are pleased to offer the following proposal for (80-90) 100-Ton 3300 Cu. Ft. Triple Hopper cars manufactured to the attached Car-builder's Specification #PC-877 and Material Allowance List, both dated September 20, 1982, and to Drawing #P877-101.

Base 100-Ton Open Top, Type "HT", Triple Hopper  
Car Description

47'-4 1/2" (length over end sills) 100-Ton capacity Open Top Hopper car complete with the following major components:

- A. Fabricated rigid steel underframe with Dresser #BS-341-AFH center plates, #M-901E high capacity draft gear, and with #SBE60CE type "E", Grade "E" couplers.
- B. 6 1/2" x 12" Grade "F", Class "F" roller bearing axles on 3 11/16" spring travel Barber S-2-C trucks, narrow pedestal Grade "B" side frames and bolsters and with two-wear J-36 Class "B" wheels.
- C. All new ABDW 8 1/2" x 12" air brake equipment, 2" composition brake shoes, brake pins, and with wedge type air line pipe anchors.
- D. Six (6) hopper gates with Miner type "F" operating mechanism.

APPROVAL  
BASE CAR & ALTERNATES  
QUOTED OK PER

*Verbal Order  
10/30/82  
MS  
Wire Confirmation  
11/2/82  
S.O.# A62-6773*

Pacific Car and Found. Company

1400 NORTH 4TH STREET, RENTON, WASHINGTON 98055 • (206) 251-7700

Mr. Robert B. Ballow  
Vice President & General Manager  
Anchorage Sand & Gravel Company, Inc.

September 27, 1982  
Page Two

For (90) only of the above described base hopper cars, we quote \$45,110.00 per car, f.o.t. our plant, Renton, Washington.

For (80) *revised 10/30/82 to \$44,941.00* only of the above described base hopper cars, we quote \$45,530.00 per car, f.o.t. our plant, Renton, Washington.

Delivery will start in First Quarter 1983 at approximately three cars per work day.

Our quoted price and delivery is subject to the receipt of your order by November 1, 1982 and/or contingent on the prior sale of our shop production space.

Material allocation policies of material vendors make it necessary that Pacific Car and Foundry Company reserve the right to substitute other materials for those shown on the attached Material Allowance List, as Pacific Car and Foundry Company determines, and at corresponding changes of Pacific Car and Foundry Company delivered prices.

We have quoted these cars delivered f.o.t. our plant, Renton Washington and the Washington State Retail Sales Tax of 6.5% will apply unless Anchorage Sand and Gravel Company can supply us with a Washington State Sales Tax Exemption Certificate.

Inspection and acceptance of all cars, for conformity of contract, will take place at our Renton, Washington plant prior to any release of cars. Title and risk of loss will be at delivery point.

The quoted base car prices are net without discount and are subject to the following provisions:

- A. Deviations in the design of the car from that generally set forth in Specification #PC-877 and Material Allowance List on which this quotation is based, will result in a corresponding increase or decrease in price.
- B. All materials included in this base car quotation are quoted firm and material escalation will not apply.
- C. All labor included in this quotation is quoted firm through March 31, 1983. Any increase or decrease in contract labor rates, cost-of-living increases, and/or fringe benefits from those in effect on March 31, 1983, for classifications of labor engaged in car work, will result in an adjustment in the price of the cars on the basis of \$14.00 per car for each one cent per hour increase or decrease in such contract labor rates, cost-of-living increases, and/or fringe benefits.

*firm  
per AG/B  
11/23/82*

Pacific Car and Foundry Company

1400 NORTH 4TH STREET, RENTON, WASHINGTON 98055 • (206) 251-7700

Mr. Robert B. Ballow  
Vice President & General Manager  
Anchorage Sand & Gravel Company, Inc.

September 27, 1982  
Page Three

- D. In the event of any labor escalation, our cost records supporting such changes will be available for your inspection and audit at our Renton, Washington office for a period of one year after completion and delivery of all cars on any contract resulting from this proposal and all claims for price adjustments must be made within one year.

This quotation is further based on attached Exhibit "I" containing our standard guarantee and patent indemnity clauses which are identical to those we extend to railroads and private car lines for whom we have built cars, and which forms a part of this car quotation. Exhibit "I" will be an integral part of any agreement with us for the purchase of cars.

The foregoing base car prices also presuppose that mutually acceptable financial arrangements will be made and that once delivery commences, your Company will make payment each week for all cars delivered and invoiced during the prior week.

Our Company will be pleased to participate in any third party financing arrangement you may desire which will be mutually acceptable to all concerned. It is understood, of course, that under such third party financing arrangements, our Company will have no obligation to the financing institution other than to execute and deliver documents relating to the delivery and transfer of possession and title to the equipment and the proper invoicing thereof.

It is also understood that while Pacific Car and Foundry Company will proceed diligently and in good faith with their production, it will not be held responsible for delays due to nonavailability of materials, Government regulations and restrictions, labor difficulties and other causes beyond Pacific Car and Foundry Company's direct control.

Thank you for the opportunity to quote this car requirement.

Sincerely yours,

A. G. Bohorfoush, Jr.  
Manager - Marketing  
Railroad Products

AGB/MJS/rr  
Enc.

cc: D. W. Paul  
Sales Manager - Western Region  
Pacific Car and Foundry Company



# Pacific Car and Foundry Company

## EXHIBIT I

### WARRANTY OF MATERIAL AND WORKMANSHIP

Pacific Car and Foundry Company guarantees that the equipment will be built in accordance with the final agreed specifications and drawings, and warrants the equipment to be free from defects in material (except as to the specialties incorporated therein not manufactured by Pacific Car and Foundry Company) and workmanship under normal use and service, Pacific Car and Foundry Company's obligation being limited to making good at its plant any part or parts of any unit of the equipment which shall, at any time within one year after delivery of such unit to the customer, be returned to Pacific Car and Foundry Company with transportation charges prepaid and which Pacific Car and Foundry Company's examination shall disclose to its satisfaction to have been thus defective. BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Buyer's rights under the foregoing warranty shall be its sole and exclusive remedy and Builder will have no liability for lost profits or for incidental, consequential or commercial losses. The foregoing warranty of Pacific Car and Foundry Company is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of Pacific Car and Foundry Company, and Pacific Car and Foundry Company neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the equipment.

### PATENT INDEMNITIES

Except in cases of articles and materials specified by Vendee and not manufactured by the Builder, and designs, systems, processes and formulae utilized by Builder in or about the construction of the equipment, or any unit of the equipment, as the result of specification thereof by Vendee, the Builder agrees to indemnify, protect and hold harmless Vendee from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Vendee or its assigns because of the use in or about the construction or operation of the equipment or any unit thereof of any article, material, design, system, process or formula which infringes or is claimed to infringe upon any patent or other right, and Vendee likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the equipment or any unit thereof of any article or material specified by Vendee and not manufactured by the Builder, or any design, system, process or formula utilized by Builder in or about the construction of the equipment or any unit of the equipment as the result of specification thereof by Vendee which infringes or is claimed to infringe upon any patent or other right other than patents or other rights controlled by Builder.